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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 7, 2001

APPLICATION OF

TOLL ROAD INVESTORS  
PARTNERSHIP II, L.P.

CASE NO. PUF010017

For Approval of Refinancing  
and Amendment of Certificate  
of Authority

FINAL ORDER APPROVING REFINANCING AND  
AMENDING CERTIFICATE OF AUTHORITY

On July 3, 2001, Toll Road Investors Partnership II, L.P. ("Toll Road Investors" or "Partnership"), filed with the Clerk of the Commission its Application for Approval of Refinancing and for Amendment of its Certificate of Authority to Extend the Termination Date. The Partnership requested approval of a plan to call certain outstanding bonds and to raise additional capital by issuing new bonds maturing from 2036 to 2056. In conjunction with the refinancing, Toll Road Investors sought an extension the Partnership's certificate of authority termination date from April 2, 2036, to April 2, 2056, or a later date if any bonds remain outstanding. For the reasons discussed in this Order, the Commission will grant, in part, the application.

By letter dated July 20, 2001, and filed with the Commission, Secretary of Transportation Shirley J. Ybarra stated

that her office and the Virginia Department of Transportation ("VDOT") supported the application.

On July 31, 2001, the Commission entered its Order Directing Notice and Authorizing Comments on the application. The Partnership was ordered to provide a copy of the Order and a copy of its application to designated public bodies. In addition, the Partnership was directed to publish a notice in a daily newspaper of general circulation within the area of the Dulles Greenway. On September 6, 2001, the Partnership filed its proof of publication and service of the order and its application. The Commission finds that proper notice of this application was given.

In response to the notice of the application, the Loudoun County Administrator requested that the Commission schedule a hearing on the application in a letter filed with the Commission September 14, 2001. On October 2, 2001, the Administrator filed with the Commission a letter advising that Loudoun County representatives and the Partnership had conferred and that Loudoun County withdrew its request for a public hearing.

The President and Chief Executive Officer of the Metropolitan Washington Airports Authority ("MWAA") filed a letter dated September 14, 2001. According to the letter, MWAA leases Washington Dulles International Airport ("Washington Dulles") and Ronald Reagan Washington National Airport from the

United States for 50 years ending June 7, 2037. The Partnership's easement allowing use of Washington Dulles property terminates on the same date, and MWAA has no authority to extend the term of the agreement.

The Staff Report on the Application of Toll Road Investors II, L.P. ("Staff Report") was filed on October 10, 2001. In the Staff's analysis, significant commercial development at Washington Dulles and in Loudoun County prompted the refinancing proposal. New corporate development, including large facilities for AOL Time Warner and WorldCom, and growing residential communities flank the Dulles Greenway. This growth has led to a corresponding increase in traffic on the Dulles Greenway and surrounding public roadways. The improvements to be financed with the additional investment were contemplated by the Partnership and VDOT.

The Staff concluded that Toll Road Investors do not have the cash flow from operating revenue, after paying operating expenses and covering current financing obligations, to fund a major capital improvement program. Significant additional capital is needed to fund improvements. Funding improvements through higher tolls could discourage use of the Greenway and reduce revenues. Issuing zero-coupons bonds, as proposed, appeared reasonable.

The Staff recommended approval of the proposed financing plan. The Staff did not, however, agree with the Partnership's open-ended extension of the certificate of authority termination date. The termination date, in the Staff's view, should be the earlier of ten years past the latest maturity date or upon final repayment of the new zero-coupon bonds. The Staff also recommended that the Commission establish certain reporting requirements for the refinancing and preparation and reporting of information on the Partnership's reinvested earnings account.

By letter filed with the Commission on October 22, 2001, the Partnership advised the Commission that it did not object to the Staff's recommended conditions.

We approved a refinancing of the Dulles Greenway on November 24, 1998. Toll Road Investors, II L.P., Case No. PUF980025, 1998 S.C.C. Ann. Rep. 454. The Partnership identified in its application now before the Commission the need for additional investment, and the Staff agreed. The Partnership determined that a refinancing using zero-coupon bonds with extended maturities to replace the debt authorized in 1998 and to raise additional funds was an appropriate financing tool. The Staff concurred with the Partnership's assessment. Upon consideration of the record previously described, the Commission will grant Toll Road Investors' application to the extent discussed in this Order. The Commission finds that the

refinancing is in the public interest, and we will approve the refinancing proposal.

With regard to the extension date of the certificate of authority, the Commission agrees with the Staff that the Virginia Highway Corporation Act of 1986, Chapter 20 (§ 56-535 et seq.) of Title 56 of the Code of Virginia, contemplates a definite termination date for a certificate of authority. The Staff proposed linking the termination date to the date the bonds are retired, and the Partnership does not object. While the current termination is a fixed date, April 2, 2036, we find that the statute provides the Commission with the discretion to prescribe a formula, which will subsequently fix the date. Accordingly, the Commission will adopt the Staff's proposed formula for the certificate of authority termination date: the earlier of ten years past the latest maturity date of the bonds authorized in this Order or upon final repayment of the new zero-coupon bonds. We will condition the extension of the certificate of authority on completion of the refinancing.

Several reporting requirements were recommended in the Staff Report, and Toll Road Investors do not object to their imposition. As recommended by the Staff, Toll Road Investors shall submit reports until the refinancing is completed or abandoned. The reports should detail the progress of the refinancing efforts and any changes in the proposed plan. The

Partnership shall also file a final report after the closing of the refinancing.

The Staff Report also addressed the need for reporting the balance in the reinvested earnings account. The Commission approved the reinvested earnings account as a means of providing the Partnership an opportunity to earn a fair return without guaranteeing a return. In conjunction with the reinvested earnings account, the Commission approved a return on equity. Toll Road Corp., Case No. PUA900013, Opinion and Final Order of July 6, 1990, 1990 S.C.C. Ann. Rep. 197, 199, Order Amending Certificate of June 28, 1991, 1991 S.C.C. Ann. Rep. 208, 209. To discharge our oversight responsibilities, the balance in the reinvested earnings account and all supporting information must be available to the Commission and our Staff. We will order the Partnership to maintain the account so that a balance may be determined. In conjunction with this requirement for the reinvested earnings account, the Commission will revise in this Order the reporting requirements for Toll Road Partners to eliminate monthly reports.

The Partnership files its reports with the Commission's Divisions of Public Utility Accounting and Economics and Finance rather than with the Clerk of the Commission. Toll Road Corp., Case No. PUA900013, Fourth Order Amending Certificate of Dec. 14, 1994, 1994 S.C.C. Ann. Rep. 207. While we will

continue this filing procedure, the Commission gives the Partnership notice that, absent further order of the Commission, these reports will not be treated as confidential.

In Case No. PUA900013, the Commission entered three orders providing confidential treatment of specifically identified exhibits to various applications, and we authorized the Staff to withhold confidential material from public disclosure.<sup>1</sup> The Commission sees no obvious basis for continued confidential treatment of quarterly reports, annual reports, and any special report requested by the Staff.

No facility operating pursuant to the Virginia Highway Corporation Act of 1986 competes with Toll Road Partners. The Partnership does not appear to have identified any trade or process secret that might merit protection. According to its application, the Partnership anticipates private placement of its bonds. Consequently, there will be limited, if any trading of the bonds. Disclosure of the Partnership's financial information would not appear to have the potential to disrupt financial markets. The Partnership can, of course, seek

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<sup>1</sup> Protective Order of June 16, 1992 (Document Control No. 92040040 filed June 16, 1992), Order Inviting Response and Protective Order of July 19, 1993 (Document Control No. 930730121 filed July 19, 1993), and Protective Order of March 21, 1994 (Document Control No. 940330244 filed March 21, 1994). In addition, the Commission has stated that the "Staff is authorized to withhold any confidential material from public disclosure, but TRIP II and TRCV are directed to avoid filing confidential information if compliance . . . can otherwise be achieved." Toll Road Corp., Case No. PUA900013, Order of Nov. 29, 1993, 1993 S.C.C. Ann. Rep. 180.

confidential treatment of information as provided by our Rules of Practice and Procedure, 5 VAC 5-20-170.

As noted in the Staff Report, and as MWAA advised in its letter to the Commission, the termination date of MWAA's lease of the Washington Dulles property injects another consideration for investors. The maturity date of some bonds that may be issued pursuant to the authority we grant in this Order will fall after the Partnership's current right to occupy portions of the airport property expires. The Commission does not view this timing matter as barring our authorization of the refinancing. An investor in the Partnership's securities must weigh the anticipated growth in traffic on the Dulles Greenway, anticipated gross revenues, anticipated revenues available for debt service and retirement, and associated risk. This timing matter will, the Commission assumes, be taken into consideration by investors.

The Staff recommended that the Partnership negotiate with MWAA to extend its lease and report on the progress of negotiations. Toll Road Investors obviously have an incentive to continue occupancy. The Office of the Secretary of Transportation and the Virginia Department of Transportation, which will eventually own the Dulles Greenway, support the refinancing. The Commission assumes that these agencies responsible for the Commonwealth's road system have considered



the uncertainty of continued occupancy. In these circumstances, the Commission finds that there is no need for the Commission to direct negotiations and to require reporting.

Accordingly, IT IS ORDERED THAT:

(1) As provided by The Virginia Highway Corporation Act of 1986, Chapter 20 (§ 56-535 et seq.) of Title 56 of the Code of Virginia, the Partnership's application for approval of refinancing and amendment of its certificate of authority is granted to the extent discussed in this Order and is otherwise denied.

(2) The Partnership is authorized to issue approximately \$270.0 million in new debt securities with the proceeds to be used to retire approximately \$100.0 million of existing debt and to finance improvements to the Dulles Greenway as described in its Application of Toll Road Investors II, L.P. for Approval of Refinancing and for Amendment of its Certificate of Authority to Change Termination Date filed July 3, 2001.

(3) On January 2, 2002, and on the first Commission business day of each succeeding calendar quarter until the closing of the refinancing, the Partnership shall file with the Clerk of the Commission a report on the progress of the refinancing and any changes in the Plan of Financing, Exhibit 1 of the Application of Toll Road Investors II, L.P. for Approval of Refinancing and for Amendment of its Certificate of Authority

to Change Termination Date filed July 3, 2001. The Clerk of the Commission shall associate these reports with this Case No. PUF010017. Copies of the reports shall be simultaneously served on the directors of the Commission's Divisions of Public Utility Accounting and Economics and Finance.

(4) Within sixty (60) days of the closing of the refinancing, the Partnership shall file with the Clerk a report of the full details of the refinancing, including the terms of all obligations issued. This information shall include a schedule of the maturity dates and interest payment dates, if any, of all obligations. Copies of the report shall be simultaneously served on the directors of the Commission's Divisions of Public Utility Accounting and Economics and Finance.

(5) If the plan of refinancing approved in ordering paragraphs (1) and (2) of this Order is abandoned, the Partnership shall promptly file a report on the abandonment with the Clerk of the Commission. The Clerk of the Commission shall associate this report with this Case No. PUF010017. Copies of the report shall be simultaneously served on the directors of the Commission's Divisions of Public Utility Accounting and Economics and Finance.

(6) The Partnership's certificate of authority granted in Toll Road Corp., Case No. PUA900013, Opinion and Final Order of

July 6, 1990, 1990 S.C.C. Ann. Rep. 197, and amended by Order of January 28, 1991 (Document Control No. 91012304 filed Jan. 28, 1991), Order Amending Certificate of June 28, 1991, 1991 S.C.C. Ann. Rep. 208, Second Order Amending Certificate of July 21, 1992, 1992 S.C.C. Ann. Rep. 205, Third Order Amending Certificate of August 19, 1993, 1993 S.C.C. Ann. Rep. 178, Order of November 29, 1993, 1993 S.C.C. Ann. Rep. 180, and Fourth Order Amending Certificate of December 14, 1994, 1994 S.C.C. Ann. Rep. 207, is further amended as follows:

- (a) Ordering paragraph (1) of the Fourth Order Amending Certificate of December 14, 1994, 1994 S.C.C. Ann. Rep. 207, is deleted from the certificate of authority.
- (b) Ordering subparagraphs 11(a) and 11(c) of the Opinion and Final Order of July 6, 1990, 1990 S.C.C. Ann. Rep. 197, 199-200, and reaffirmed in ordering paragraph (6) of the Order of November 29, 1993, 1993 S.C.C. Ann. Rep. 180, are deleted from the certificate of authority.
- (c) The second sentence of the second paragraph of the Order of November 29, 1993, 1993 S.C.C. Ann. Rep. 180, authorizing the Staff to withhold confidential information from public disclosure, is deleted from the certificate of authority.

(7) The provisions of Toll Road Corp., Case No. PUA900013, Opinion and Final Order of July 6, 1990, 1990 S.C.C. Ann. Rep. 197, and amended by Order of January 28, 1991 (Document Control No. 91012304 filed Jan. 28, 1991), Order Amending Certificate of June 28, 1991, 1991 S.C.C. Ann. Rep. 208, Second Order Amending Certificate of July 21, 1992, 1992 S.C.C. Ann. Rep. 205, Third Order Amending Certificate of August 19, 1993, 1993 S.C.C. Ann. Rep. 178, Order of November 29, 1993, 1993 S.C.C. Ann. Rep. 180, Fourth Order Amending Certificate of December 14, 1994, 1994 S.C.C. Ann. Rep. 207, except as modified in this Order, remain in full force and effect.

(8) The Partnership's certificate of authority shall terminate on the earlier of the date ten (10) years after the last maturity date of any bond issued pursuant to the authority granted in ordering paragraph (2) of this Order or upon the final payment of principal or interest of any bond issued pursuant to the authority granted in ordering paragraph (2) of this Order. If the Partnership abandons the plan of refinancing as addressed in ordering paragraph (4) of this Order, ordering paragraph (1) of the Fourth Order Amending Certificate of December 14, 1994, 1994 S.C.C. Ann. Rep. 207, will be reinstated without further order of the Commission upon the filing of the report with the Clerk.

(9) On or before December 10, 2001, the Partnership shall file with the Commission's Divisions of Public Utility Accounting and Economics and Finance a statement of the historic and current balances in the reinvested earnings account, and information supporting these balances, including historic and current levels of equity investment and changes in the equity investment. The Partnership shall maintain a balance of the reinvested earnings account on a calendar quarterly basis and shall provide the balance and supporting information within 15 days upon the request of the Commission's Division of Public Utility Accounting or the Division of Economics and Finance.

(10) Commencing with the fourth calendar quarter of 2001, the Partnership shall file with the Commission's Divisions of Public Utility Accounting and Economics and Finance within 60 days of the end of the quarter a balance sheet, an income statement, and a cash flow statement for the quarter and for the fiscal year to date.

(11) Toll Road Corp., Case No. PUA900013, Opinion and Final Order of July 6, 1990, 1990 S.C.C. Ann. Rep. 197, Order of January 28, 1991 (Document Control No. 91012304 filed Jan. 28, 1991), Order Amending Certificate of June 28, 1991, 1991 S.C.C. Ann. Rep. 208, Second Order Amending Certificate of July 21, 1992, 1992 S.C.C. Ann. Rep. 205, Third Order Amending Certificate of August 19, 1993, 1993 S.C.C. Ann. Rep. 178, Order

of November 29, 1993, 1993 S.C.C. Ann. Rep. 180, Fourth Order Amending Certificate of December 14, 1994, 1994 S.C.C. Ann. Rep. 207, and this Final Order Approving Refinancing and Amending Certificate of Authority in Case No. PUF010017 shall constitute the certificate of authority issued pursuant to the Virginia Highway Corporation Act of 1986, Chapter 20 (§ 56-535 et seq.) of Title 56 of the Code of Virginia.

(12) The Clerk shall mail attested copies of this Order to Shirley J. Ybarra, Secretary of Transportation, P.O. Box 1475, Richmond, Virginia 23218; Charles D. Nottingham, Commissioner of Transportation, Department of Transportation, 1401 East Broad Street, Room 414, Richmond, Virginia 23219; Kirby M. Bowers, County Administrator, Loudoun County, P.O. Box 7000, Leesburg, Virginia 20177-7000; and James A. Wilding, President and Chief Executive Officer, Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, D.C. 20001-6000.

(13) This Case No. PUF010017 is closed and dismissed from the Commission's docket.

Commissioner Moore did not participate in this proceeding.